

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 43 OF 2005

Smt. Gangubai Pavsha Tupe & ors. ... Appellants

V/s

Smt. Padibai Ladku Tupe & ors. ... Respondents

Mr. D.A. Patil with M.D. Parab for the appellants.

Miss Gauri Godse for the Respondent No.9.

CORAM: P.V. KAKADE, J.

DATED: 17TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Raigad at Alibag, dated 17.1.2004 allowing the appeal and setting aside the judgment and order of the Trial Court dated 31.10.2001 decreeing the plaintiffs suit for partition, possession and other consequential relief of perpetual injunction.

2. I have heard the learned counsel for both parties. Perused the record and proceeding of the lower appellate Court.

3. The plaintiffs filed the suit for partition, possession and permanent injunction in respect of the suit properties on the ground that the suit lands were undivided joint Hindu Family properties of plaintiffs and defendants 1 to 9 and they had 1/3 undivided share in the suit property and defendants also had similar share therein. It was further alleged that since the defendants refused to partition the property, the suit came to be filed.

Defendants contested the suit inter-alia denying the allegations made by the plaintiffs and submitted that part of the property was self-acquired property and, as such, the suit for partition was not tenable in law.

4. The learned Trial Judge adjudicated the suit on merits and came to the conclusion that the plaintiffs failed to prove that the suit lands were undivided joint Hindu family properties of plaintiffs and defendants 1 to 9 and, as such, the plaintiffs were held entitled to a decree of partition of the suit lands and suit came to be decreed.

The appeal was carried to the District Court. The

learned Ad-hoc Addl. District Judge, after hearing both parties, came to the conclusion that the property was not belonging to the Hindu joint family. The plaintiffs were not entitled for partition and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this case. The question relating to the alleged existence of the joint Hindu family property was the issue of fact sought to be established on the basis of documentary evidence and for which purpose record and proceedings were called. Perusal of the entire record shows that the plaintiffs at the most are shown to be the tenants in the part of the property but had nowhere they are mentioned as owners of the property. Their possession is also held by the lower appellate Court to be the possession as protected tenant. However, it appears that the plaintiffs totally failed to establish that the property belongs to the joint Hindu family and, as such, they had shares therein. Apparently, the judgment of lower appellate Court therefore shows that the entire evidence was appreciated in proper perspective while reversing the finding recorded by the lower Court.

6. I do not wish to interfere in the finding recorded by the lower appellate Court and hence the appeal stands dismissed with no order as to costs.

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